

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206368

DATE: November 2, 1982

MATTER OF: Drinkwater Engineering, Inc.

DIGEST:

1. Protest against alleged apparent improprieties in solicitation's proposal evaluation scheme filed after award is untimely since GAO Bid Protest Procedures require filing prior to the closing date for receipt of proposals.
2. The contracting agency's procurement officials have a reasonable degree of discretion in evaluating technical proposals and GAO will not disturb this discretion unless it is shown to be arbitrary or in violation of the procurement laws and regulations. The record shows that the agency's elimination of the protester's proposal from the competitive range was reasonable in view of the informational deficiencies in the protester's technical approach.
3. The protester's challenge to the qualifications of the contracting agency personnel who evaluated the solicitation proposals, for which the protester provides GAO only speculation and suspicion, gives no basis for GAO to question the qualifications of these personnel.

Drinkwater Engineering, Inc. (Drinkwater), protests the elimination of its offer from the competitive range under request for proposals (RFP) No. R6-12-82-25, issued by the Department of Agriculture, Forest Service (Forest Service). The RFP was for the performance of a cadastral survey of the Crab Eagle section at Siuslaw National Forest, Oregon.

Drinkwater raises the following grounds of protest:

- (1) The Forest Service evaluation of the company's technical proposal was invalid and unjustified in view of the alleged completeness of the proposal.
- (2) The RFP method for evaluating the technical proposals was cumbersome and unnecessary; in particular, the assignment of a substantial number of technical points to cadastral surveys for the Forest Service during the past 2 years was unreasonable.
- (3) The qualifications of the technical evaluators on the Forest Service Board of Contract Awards were inadequate to competently rate the proposals.

For the reasons set forth below, we dismiss Drinkwater's protest in part and deny it in part.

Background

Twelve proposals were received in response to the RFP. These proposals were evaluated by the agency's Board of Contract Awards, which was composed of three engineers who were licensed land surveyors. Ten proposals were determined to be technically acceptable. The board rejected Drinkwater's proposal as technically unacceptable because the company's score of 89 points out of a possible 140 points was below the lowest acceptable technical proposal score of 100 points. An award was made to another firm.

Evaluation Criteria

The RFP provided that technical proposals would be evaluated on the basis of the following criteria:

- (1) Qualifications of personnel assigned to project.

- (2) Technical approach to project to be demonstrated, in part, by a proposed survey scheme prepared on a topographic map. The work to be performed involved search and evaluation of "corners."
- (3) Past experience of personnel assigned to project.

As to the criteria for award, the RFP stated that award would be made to the responsible offeror whose proposal was technically acceptable and within the competitive range and whose proposal would be the most advantageous to the Government, price and other factors considered. Drinkwater contends that while technical qualifications of offerors should be a matter of concern to the Forest Service, many aspects of the above-described proposal evaluation system were "cumbersome" and constituted an enormous amount of "red tape." Drinkwater argues that instead of this system, the Forest Service should have relied substantially on whether an offeror was licensed and a member in good standing with a local professional surveying organization, under which Drinkwater qualifies. In addition, Drinkwater asserts that in most States, it is a breach of ethics for a land surveyor to perform any service in an area where the surveyor is not qualified, and the surveyor can be suspended from practice or have a license revoked.

Drinkwater also contends that the Forest Service assigned an excessive number of technical evaluation points to the subcriterion of "Cadastral Surveys for Forest Service during the past 2 years," specifically listed in the RFP under the evaluation criteria of past surveying experience.

Our Bid Protest Procedures, 4 C.F.R. part 21 (1982), require that protests based on alleged improprieties in a solicitation, which are apparent prior to the closing date for the receipt of proposals, be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1982). The closing date for receipt of proposals was January 11, 1982. Drinkwater's postaward protest was received by our Office on

February 9, 1982. Therefore, Drinkwater's protest of the RFP's evaluation scheme is untimely and will not be considered.

As to Drinkwater's argument that the Forest Service assigned an excessive number of points to the subcriterion listed in the RFP for similar cadastral surveys for the Forest Service, the RFP was silent regarding the number of technical evaluation points assigned to this subcriterion. However, the RFP did list the 30-point maximum assigned to the past surveying experience criterion. In any event, Drinkwater provides us with no explanation as to why the weight given to the subcriterion was excessive other than to argue that the agency should have relied exclusively on whether an offeror was licensed and a member in good standing with a professional organization. Consequently, we have no basis to conclude that the weight given by the Forest Service to this subcriterion was unreasonably high.

The Technical Evaluation

Drinkwater essentially claims that the scoring of its technical proposal was unjustified because, in its opinion, the company provided an adequate technical approach. Drinkwater challenges the conclusion that its technical proposal failed to mention any research. According to Drinkwater, its technical proposal clearly indicated that it would evaluate evidence and that 24 hours would be allotted for such evaluation. In addition, Drinkwater asserts that its technical approach with respect to its survey scheme was complete despite the characterization of the Forest Service's evaluation board that many corners were not tied together in Drinkwater's proposal.

Drinkwater also questions the propriety and consistency of the evaluation of its past surveying experience.

Drinkwater alleges that all of the surveys listed in its technical proposal were more precise and required more technical competence than the survey called for in the RFP. Further, under the subcriterion of similar surveying experience, it received the maximum number of rating points but under the same subcriterion in the category of past experience, it received less than 50 percent of the maximum available points.

Finally, Drinkwater questions the "scientific basis" for its proposal ratings because of inconsistencies among the scores of the individual evaluators. As an example, Drinkwater refers to individual evaluation sheets where one rating on an evaluation item was "0," another "5," and another "10"; yet, the overall rating for that item was "0." Also, Drinkwater points out that under the category of whether the chief of the offeror's surveying party was a registered surveyor, two evaluators concluded Drinkwater's chief was registered, while one apparently did not.

It is not the function of our Office to make determinations as to the acceptability or relative merits of technical proposals. That function is the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Macmillan Oil Company, B-189725, January 17, 1978, 78-1 CPD 37. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in evaluating proposals and that this discretion will not be disturbed unless shown to be arbitrary or in violation of the procurement laws and regulations. Industrial Technological Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. Additionally, the protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. These principles also apply to a review by our Office of competitive range determinations. See Magnetic Corp. of America, B-187887, June 10, 1977, 77-1 CPD 419.

From our review of the record, we find that the Forest Service's elimination of Drinkwater from the competitive range was reasonable. The RFP specifically cautioned the offerors that, as a minimum, technical proposals should include a sketch of the proposed survey scheme and a narrative description of the proposed survey procedure so that offeror understanding of the scope of work could be evaluated. The record shows that the evaluation board found that the intent of Drinkwater's proposed survey procedures could not be determined and that Drinkwater's narrative did not "say anything." Also, at least one of the evaluators found that Drinkwater had missed many survey lines and some key corners in its technical proposal.

Furthermore, Drinkwater admits that it did not detail every step in its proposed survey procedure and, specifically, that it did not indicate in its technical proposal that corners would be tied. Drinkwater attempts to defend its technical proposal by arguing that since the RFP required corners to be tied, it would comply with the RFP during the performance of the survey. Therefore, to have repeated the RFP requirement would not have contributed to a "short narrative description of the survey procedures" and, also, would have constituted an unnecessary statement of procedures on a survey that could have been presented "as a guide line to an entry-level survey student." However, we are not persuaded by Drinkwater's explanation of the informational inadequacies in its technical approach to the required survey. An offeror must demonstrate its technical ability to meet the contracting agency's requirements in the proposal the offeror submits in response to a given solicitation. See Servo Corporation of America, B-193240, May 29, 1979, 79-1 CPD 380.

With respect to the evaluation of its past surveying experience, Drinkwater gives no explanation of how the prior surveys listed in its technical proposal required more precision and competence than the one called for in the RFP. Consequently, we find that the company has simply failed to meet its burden of

proof on this point. In addition, we see no apparent inconsistency in the rating given to Drinkwater for similar experience under the RFP evaluation criterion pertaining to the qualifications of an offeror's personnel and the rating given to Drinkwater for similar projects under the RFP evaluation criterion pertaining to an offeror's past experience. In our opinion, the RFP subcriterion of similar experience was for the general overall cadastral survey experience of an offeror's personnel, while the subcriterion covering similar projects was limited to cadastral surveys in the last 5 years that were similar to the one called for in the RFP.

With regard to the fact that two of the evaluation board members found the chief of Drinkwater's surveying party to be registered, but one did not, Drinkwater was not prejudiced because in the overall evaluation, the company received the maximum possible rating. Furthermore, with regard to the other apparent inconsistency in scoring mentioned by Drinkwater, there is no explanation in the record. However, even if Drinkwater received the 10 points given by one evaluator its total score would still have been less than the 100-point cutoff for the competitive range. Moreover, contrary to Drinkwater's inferences, we find that the overall board evaluation of the company was consistent with the evaluation scheme set forth in the RFP. In general, Drinkwater received the maximum point score for its surveying qualifications, but little or no other score because its technical approach was insufficiently described and because it had no cadastral surveying experience with the Forest Service in the past 2 years. Also, we find significant the fact that 10 proposers were found to be in the competitive range.

Qualifications of the Evaluators

Drinkwater alleges that the Oregon Board of Engineering Examiners indicates that the chairman of the evaluation board is a licensed logging engineer in Oregon, but not a licensed surveyor in Oregon. Drinkwater also alleges that the other two board members

are licensed land surveyors in Oregon, but not licensed engineers in Oregon. According to Drinkwater, it is necessary to know how many surveys the board members have filed in Oregon counties under their professional licenses since the president of Drinkwater has filed in the various county surveyor offices in Oregon over 700 boundary surveys and approximately 50 cadastral surveys under his professional license. Drinkwater feels that this is important because the board members were rating Drinkwater's technical competence; yet, the company had no basis to judge whether the members' qualifications and technical expertise were adequate to competently make any such rating.

The decision as to how many and which members of an evaluation board or panel will review proposals, as well as the choice of the evaluators, is within the discretion of the contracting agency, Data Resources, Inc., B-203166, August 5, 1981, 81-2 CPD 98, and will not be reviewed by our Office absent allegations of fraud, bad faith, or conflict of interest. New York University, B-195792, August 18, 1980, 80-2 CPD 126; University of New Orleans, B-184914, May 26, 1978, 78-1 CPD 401. We generally will not appraise the qualifications of agency evaluators. Ads Audio Visual Productions, Inc., B-190760, March 15, 1978, 78-1 CPD 206; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. Drinkwater's speculations and suspicions provide us with no reason to question the qualifications of the members of the evaluation board.

We dismiss Drinkwater's protest in part and deny it in part.



Acting Comptroller General
of the United States